

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Amendment of Part 90 Concerning the
Commission's Finders Preference Rules

To: The Commission

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) WT Docket No. 96-199
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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COMMENTS OF ADVANCED ELECTRONICS, INC.

Advanced Electronics, Inc. (Advanced Electronics), by its attorney, submits the following comments in the above-captioned proceeding.

Advanced Electronics was granted a dispositive finder's preference award by the Commission against 800 MHz Trunked SMR stations licensed to Bonnie H. Dramov (Dramov), licensee of station WNXE817 (Case 93F602), and Henry Cole (Cole), licensee of station WNXE818 (Case 93F603). The Commission granted these requests on March 31 and April 12, 1994, respectively. Advanced Electronics promptly filed an application for assignment of the target frequencies at the same site as Dramov and Cole. However, Dramov and Cole appealed the Commission action, and the matter has remained unresolved for more than two years, even though all three parties have sent letters to the Commission requesting an expeditious decision. Advanced Electronics will be directly affected if the Commission, by this rule making proceeding, decides to dismiss all pending finder's preference requests.

Since the finder's preference program was established in 1991, it have been the primary vehicle by which Specialized Mobile Radio (SMR) licensees in areas where there were no unassigned SMR frequencies have been able to obtain frequencies to expand their fully loaded systems. The Commission did not have the resources to continually track the status of these frequencies. It relied instead on the construction completion certifications by the licensees and by checking on channel loading at the five year anniversary of the license grant. The finder's

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preference program provided the Commission with a more effective oversight of actual frequency usage. It relied upon the efforts and resources of those who needed the recovered channels by providing a means to recover frequencies that were being warehoused in a highly populated and frequency congested major metropolitan area for future expansion or sale to others. This is what made the finder's preference program so successful.

The thrust of the Notice of Proposed Rule Making in WT Docket No. 96-199 is whether the Commission should eliminate the finder's preference program with respect to stations in the 220-220 MHz band in view of the Commission decision to license stations in this band in the future on a market area basis, by auction. Under these procedures, any unconstructed or abandoned frequencies reclaimed by the Commission would be given to the market winner for the channel block. Thus, there is no incentive for anyone other than the market area licensee to request the FCC to reclaim unused frequencies, and no need for the finder's preference program to continue.

If this rule making proceeding affected only finder's preference requests in the 220-222 MHz band, Advanced Electronics would not be filing these comments. It does so because of concern about the possible dismissal of its long standing finder's preference filing, subsequent grant and long awaited decision on appeal. In particular, Advanced Electronics is concerned about the Commission's request for comment on the total elimination of the finder's preference program, and in particular, its statement that it proposes to retain the discretion to dismiss pending finder's preference requests for any service in any frequency bands in which it decides to eliminate the finder's preference program as a result of this rulemaking proceeding.

Advanced Electronics is aware, of course, that the Commission will no longer accept new finder's preference filings in the 800 MHz band for reasons similar to those presented in this proceeding. This decision was announced in the *First Report and Order, Eight Report and Order, and Second Further Notice of Proposed Rule Making* in PR Docket No. 93-144 (*FR&O*), in which the FCC adopted market area licensing for the upper 200 Specialized Mobile

Radio (SMR) channels, and proposed similar regulations for the remaining SMR channels. Advanced believes the elimination of the finder's preference program for the 800 MHz frequencies was a mistake. Instead, the program should continue for the purpose of allowing expansion of single site SMR systems.

However, regardless of the Commission's decision of the future of the finder's preference program, Advanced Electronics urges the Commission to complete the processing of any finder's preference requests and appeals that are currently pending. And if a person is granted a finder's preference award, it should have the right to perfect its award by filing an application for the frequency or frequencies that were the subject of the finder's preference award and expect to receive a license for operation on those frequencies. In the case of Advanced Electronics, an award has already been issued. All that remains is for the Commission to dispose of the petitions for reconsideration.

It appears that the Commission may be using the vehicle of the Notice of Proposed Rule Making in WT Docket No. 96-199 to eliminate the finder's preference program generally; and to then dismiss any pending finder's preference request in any frequency band, including those properly filed requests in the 800 MHz band.

It is inequitable for the Commission to establish a finder's preference program to reclaim fallow channels, invite the public to file requests for a priority in re-assigning these channels, accept a fee for processing such requests, and then dismiss requests that were filed in accordance with FCC rules and policies in effect at the time of filing. After all, the applicant has expended considerable time, effort and resources to identify and document the availability of the frequencies in reliance upon the Commission's own rules and policies. This is particularly deplorable when, as in the case of Advanced Electronics, an applicant has been waiting for almost 2-1/2 years for a final disposition of its request.

This action effectively penalizes finder's preference applicants, whose timely filed requests are still pending, for the Commission's delays in processing the numerous pending

finder's preference filings. It appears that by this action the Commission simply wants to "clear the decks" so that it may proceed with spectrum auctions without the baggage of numerous claimants for the frequencies to be auctioned, which may depress the amount auction participants are willing to bid for the spectrum.

In summary, Advanced Electronics recommends that the Commission not eliminate the finder's preference program. If it does so, however, any pending finder's preference requests should be processed in accordance with regulations in place at the time the requests were filed. If successful, the finder's preference applicant should receive an award, a reasonable period of time to file its application, and receive the same grandfathered right as other licensees who were licensed prior to the FCC rule changes.

Respectfully submitted,

Advanced Electronics, Inc.

By Gerard J. Duffy (Encl)
Gerard J. Duffy
Its Attorney

Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, N.W., Suite 300
Washington, D. C. 20037
(202) 659-0830

Dated: November 18, 1996